IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

Crl.MC.No. 3181 of 2007()

CC.136/2006 of JUDL. MAGISTRATE OF FIRST CLASS-V, KOZHIKODE

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PETITIONER:

UMMERKOYA CHERIYA, AGED 55 YEARS,
S/O. ABDULLA, C.H. HOUSE, 21-1255, ELAYADATHKUZHI
PARAMBA, PANNIYANKARA, KALLAI P.O.,KOZHIKODE-03.

BY ADV. SRI.MANJERI SUNDERRAJ

RESPONDENTS:

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1. **STATE OF KERALA,**
   REP. BY FEROKE POLICE STATION, CRIME NO.50 OF 2006
   DTD. 28/02/2003, FEROKE, KOZHIKODE.

2. **STATE OF KERALA,**
   REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 25/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

R.BASANT, J

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Crl.M.C. No. 3181 Of 2007

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Dated this the 25th day of October, 2007

ORDER

The petitioner is the 1st accused in a prosecution for offences punishable, inter alia, under Section 506(ii) r/w 149 IPC. The offence alleged include warrant offences, submits the learned counsel for the petitioner. Cognizance has been taken on the basis of the final report submitted by the Police, it is further submitted. The learned counsel for the petitioner points out to the Court that the plea of the petitioner has already been recorded also.

2. The petitioner has come to this Court to bring to the notice of the Court the fact that he is obliged to leave India to take up his employment abroad. There is no condition imposed while granting anticipatory bail which fetters his option to go abroad and take up employment. But the petitioner apprehends that in his absence, the matter may come up for trial and the learned Magistrate may not permit him to appear through counsel.

3. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].. It is not necessary for a Criminal Court to unnecessarily insist on the personal appearance of the co-accused on the days when

his personal presence is not required. He can be permitted to appear through his counsel.

4. The learned counsel for the petitioner submits that the petitioner has no intention of disputing his identity at all. Anticipating the possible rejection of application for exemption , this Court need not issue directions. If the petitioner makes appropriate application and make it clear to the learned Magistrate that the petitioner does not dispute the identity in the trial, the learned Magistrate must permit the petitioner to be represented under Section 317 Cr.P.C through counsel on the dates of examination of witnesses. It is for the petitioner to make appropriate application at the appropriate stage.

5. In the result this Crl.M.C is dismissed with observations. The learned Magistrate should not insist on unnecessary personal appearance of the petitioner on dates of posting where his personal appearance is not necessary for the progress of the case. At this stage, personal presence is not necessary. The petitioner's prayer to exempt him from personal appearance and to be represented through counsel must be considered in accordance with law. To consider such application, it is not necessary at all to insist on the personal presence of the petitioner.

(R.BASANT, JUDGE)

sj